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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.3.2005

CORAM:

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE

AND

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

W.A. No. 53 of 1999

The Management of
Hindustan Teleprinters Employees
Co-operative Thrift and Credit
Society Ltd., Madras-32. Appellant

Vs.

1. The Presiding Officer,
   Principal Labour Court,
   Madras-104.

2. N.N.Nachiappan Respondents

Prayer: Appeal under clause 15 of the Letters Patent against the order of this Court in W.P. No.7568 of 1993 dated 5.8.1998.

For appellant :: Mr.K.R.Vijayakumar

For respondent No.2 :: Mrs.Rita Chandrasekaran

JUDGMENT

(Judgment of the Court was delivered by
The Hon'ble Chief Justice.)

This writ appeal has been filed against the impugned judgment of the learned single Judge dated 5.8.1998. Heard the learned counsel for the parties and perused the records.

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2. The appellant is the Co-operative Thrift and Credit Society, which is run for the benefit of the workers of the Hindustan Teleprinters Limited, which is the company registered under the Indian Companies Act. No outsider is permitted to be either a member of the society or to utilise its facilities.

3. The second respondent in the writ petition was taken as an employee of the petitioner society in the year 1976. Since there were allegations of misappropriation and defalcations against the second respondent, the writ petitioner suspended him by order dated 26.3.1981 and a charge memo was issued on 7.8.1981. An explanation was given by the second respondent on 25.8.1981 denying the charges.

4. Meanwhile, since the petitioner was a co-operative society, the Deputy Registrar of Co-operative Societies directed the Co-operative Sub Registrar to conduct an enquiry under section 65 of the Tamil Nadu Co-operative Societies Act. Since the explanation offered by the second respondent was not acceptable, a domestic enquiry was consequently ordered and the enquiry was fixed for 29.10.1981. The second respondent refused to participate in the domestic enquiry on the plea that the enquiry under section 65 was pending.

5. It may be mentioned, as already stated above, that proceedings had been initiated under section 65 of the Tamil Nadu Co-operative Societies Act, 1961. The Deputy Registrar of Co-operative Societies (Credit), Madras by order dated 25.3.1981 directed an enquiry under section 65. The aforesaid order states as follows:-

> "Under Section 65 of the Tamil Nadu Cooperative Societies Act 53 of 1961 an enquiry is ordered into the constitution management and financial position of the Hindustan Teleprinters Employees Cooperative Thrift and Credit Society Ltd., Madras-32 with special reference to the misappropriation of funds in the disbursement of loan to members and Thiru M.Manickam, Cooperative Sub Registrar (Prosecution) of this office authorised to conduct the enquiry.
>
> He should complete the enquiry within a week and submit the report in the prescribed form." (sic.)

6. It is not disputed that the second respondent participated in the said enquiry. It may be mentioned that in the evidence recorded before the Labour Court on 25.3.1991 it has been stated that the second respondent in the writ petition participated in the enquiry under section 65 and it was held in that enquiry that the second respondent has misappropriated a sum of Rs.1,49,000/- which was the money belonging to the workers.

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7. In the meantime the second respondent was also summoned in the domestic enquiry held by the appellant. A perusal of the proceedings of the domestic enquiry held by the appellant on 28.12.1982 shows that the second respondent appeared before the enquiry officer and stated that since he has already given his deposition in the office of the Deputy Registrar of Co-operative Societies he did not wish to state anything further. It further shows that detailed querries were put to the second respondent and he gave answers to the same. On the basis of the findings in the enquiry the second respondent was dismissed. He raised an industrial dispute, which was referred to the Labour Court, Madras, which gave its award in favour of the second respondent on 6.11.1992. That award was challenged in the writ petition, which has been dismissed and hence this appeal.

8. We have carefully perused the award of the Labour Court and are of the opinion that the same cannot be sustained. It may be noted that the Labour Court has decided in favour of the employee only for the reason that no action has been taken against others. The Labour Court has held that the enquiry held under section 65 of the Act was illegal and that the charges were not proved.

9. It is no doubt true that under section 11A of the Industrial Disputes Act the Labour Court can reverse findings of fact of the domestic enquiry officer and can reappreciate and reassess the evidence. However, in the present case the Labour Court has not done that and has interfered only on the ground that other employees were not proceeded against.

10. In our opinion, the facts of each employee are different and it is not that merely because others were not proceeded against action should not be taken against the second respondent.

11. As regards the submission of the learned counsel for the second respondent that no proper enquiry was held by the appellant, a perusal of the record would show that in fact an enquiry was held by the co-operative department under section 65 of the Act and thereafter the appellant also provided an opportunity of hearing to the second respondent and in fact the second respondent appeared before the enquiry officer and gave detailed answers to the questions which he was asked on 28.12.1982, but his basic stand was that he would not give deposition before the enquiry officer as that would prejudice the enquiry under section 65 of the Act. Thus, it is not correct to say that the second respondent was not given opportunity of hearing either in the enquiry under section 65 or in the domestic enquiry held by the appellant. In fact he was given opportunity

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of hearing in both the enquiries and he did in fact appear in both the enquiries. It is the second respondent himself who was to blame for not having given his deposition in the enquiry held by the appellant although he was given an opportunity to do so.

12. It is well settled that the rules of natural justice are not a straight jacket formula vide: The Maharashtra State Financial Corporation v. M/s.Suvarna Board Mills and another, J.T. (1994)5 S.C. 280, Bar Council of India v. High Court of Kerala, J.T. (2004)11 SC (Supp.) 428 (para.47), Union of India v. Tulsiram Patel, AIR 1985 SC 1416. Natural justice is not an unruly horse vide Kumaon Mandal Vikas Nigam Limited v. Girja Shankar Pant, (2001)1 SCC 182, Board of Mining Examination v. Ramjee, AIR 1977 SC 965, Channabasappa v. State of Mysore, AIR 1972 SC 32 etc.

13. In Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee, AIR 1977 SC 965 the Supreme Court observed as follows:-

> "Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter.
>
> The Court cannot look at law in the abstract or natural justice as a mere artifact. Nor can one fit into a rigid mould the concept of reasonable opportunity.
>
> Every miniscule violation does not spell illegality. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."

14. In Janatha Bazar v. Secretary, Sahakari Noukarara Sangh, AIR 2000 SC 3129 the Supreme Court held that in case of misappropriation, whether, of small amount or large amount, the only punishment which can be given is dismissal.

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15. For the reasons given above, we set aside the impugned judgment of the learned single Judge dated 5.8.1998 as well as the award of the Labour Court dated 6.11.1992. The writ appeal is allowed. There will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ns.

To

The Presiding Officer,
Principal Labour Court,
Madras-104.

W.A. No. 53 of 1999

1 cc to Mr. K.R. Vijayakumar, Advocate, SR. 12017
1 cc to M/S. Aiyar & Dolia, Advocate, SR. 11613

MAB (CO)
kk 17.3.05

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